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Supreme Court, U.S.
FILED

Docket Number 01 586 SEP - 4 2001

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SUPREME COURT OF THE UNITED STATES

CECIL E. CLARK, vs. LINDA KAY CLARK,

Petitioner, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Utah Supreme Court's decision to declare Petitioner to be married, without his express consent, is constitutional under the due process provisions, the First Amendment and the penumbra of privacy rights afforded Petitioner in the United States Constitution.

2. Is Utah's "common law marriage" statute unconstitutional as now interpreted by the Utah Supreme Court in violation of due process guarantees under the United States Constitution and the penumbra of privacy rights, set forth above?

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CITATIONS OF OPINIONS BELOW

The order and judgment of the Utah Supreme Court was entered on June 5, 2001, as Clark vs. Clark, Universal citation 2001, UT. 44. A copy of this decision is attached in the appendix hereto.

The order and judgment of the Utah Court of Appeals was not reported. It was entered on March 2, 2000. A copy of this decision is attached in the appendix hereto.

Petitioner's appeal to the Utah Court of Appeals and then to the Utah Supreme Court of the order declaring him to be married to Linda Kay Clark, then divorcing them, and granting other relief, was entered by the Third Judicial District Court in and for the State of Utah (a trial court of general jurisdiction). This decision was entered on or about September 29, 1997 and is unreported. A copy of the findings of fact, conclusions of law and order of

declaration of marriage in issue are attached in the appendix hereto. This is the original state judgment and order sought to be vacated.

STATEMENT OF JURISDICTION

The jurisdiction of the United States Supreme Court is defined in Article III of the Constitution of the United States. The order of the Utah Supreme Court denying Petitioner's appeal was entered on June 5, 2001. A petition for rehearing was made by a party in a joined case. That petition for rehearing was denied. The Utah Supreme Court has now remitted this case. The United States Supreme Court has jurisdiction to review this order and judgment of the Utah Supreme Court pursuant to 28 U.S.C. §1257(a). It should be noted that the Utah Supreme Court is the highest court of the State of Utah.

CONSTITUTIONAL PROVISIONS, TREATISES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

Utah Code Annotated §30-1-4.5, entitled "Validity of Marriage not Solemnized" provides in relevant part:

> (1) a marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between two consenting parties who: (a) are capable of giving consent; (b) are legally capable of entering a solemnized marriage under the provisions of this chapter; (c) have cohabited; (d) mutually assume marital rights, duties and obligations; and (e) who hold themselves out and have acquired a uniform and general reputation as husband and wife.
>
> (2) the determination or establishment of a marriage under this section must occur during the relationship described in subsection (1), or within one year following the termination of that relationship. Evidence of a marriage recognizable under this section may be manifested in any form, and my be proved under the same general rules of evidence as facts in other cases.

STATEMENT OF THE CASE

Petitioner Cecil E. Clark ("husband") seeks certiorari to this Court to review the decision of the Utah Supreme Court in favor of Linda Kay Clark ("wife"). The Utah Supreme Court affirmed the determinations of Utah's Court of Appeals and of the trial court, finding that a non-solemnized, or "common law" marriage, pursuant to Utah Code Annotated §30-1-4.5, had occurred between the parties.

The following facts have been established and recognized by the Supreme Court of the State of Utah in its June 5, 2001 decision, or were before the Utah Supreme Court in its record on appeal: husband and wife had an 18 year solemnized marriage, which ended in divorce on August 27, 1985 in the state courts of Utah. Within a few months after the divorce was granted, husband and wife resumed living together. They continued to live together for

a period of many years, until at least December of 1995 (husband's testimony), or until as late as August of 1996 (based on the finding of the Utah trial court).

After their divorce in 1985, neither of these parties participated again in any solemnized marriage with each other or with any other person, until husband married another woman in October, 1996.

In October of 1996, wife brought this action in the Utah trial court against husband to establish a "common law" marriage, to obtain a decree of divorce divorcing her in that marriage, and to divide the parties' assets.

Trial was held on August 13, 1997 in the district court for Salt Lake County, Utah, and a minute entry was issued that day that "the statutory requirements have been met and a common law marriage existed up to August of 1996 when the parties separated." Findings of fact, conclusions of law and an order declaring marriage were entered in the trial

court on September 29, 1997. Those findings are attached in the appendix.

Both parties appealed to the Utah Court of Appeals. In his briefing to the Utah Court of Appeals, and subsequently to the Utah Supreme Court, the husband challenged the trial court's decision, and the appellate court's affirmation, that the wife had met the statutory requirements to establish a "common law" marriage. Specifically, he argued that the wife had failed to meet her burden of proving the existence of a contract between the parties to become married and of proving the consent of the husband to become married in a "common law" marriage.

The Utah Court of Appeals affirmed the trial court decision. The husband proceeded on petition for writ of certiorari to the Utah Supreme Court, which was granted. Ultimately, the Utah Supreme Court affirmed the decisions of the Utah Court of Appeals and of the trial court.

Though the decision of the Utah Supreme Court asserts that there was "considerable evidence" to find the elements of a non-solemnized marriage, neither the trial court nor either appellate court in either appellate opinion have cited to a single moment in time when Cecil E. Clark intended to become married pursuant to Utah Code Annotated §30-1-4.5, and contracted to marry Linda Kay Clark.

The trial record is replete with individual facts arguably working in favor of the husband or in favor of the wife and their respective positions. The facts cited to both the Utah Court of Appeals and the Utah Supreme Court in favor of the husband's position include the following:

a. As early as October of 1993, at least one of the witnesses who testified at trial that he had assumed the parties were married became aware that husband had a relationship with

another woman, when he took that other woman (whom husband subsequently married in a traditional marriage) deer hunting.

b. In October of 1993, husband told the same witness, "you know, me and [wife] aren't married."

c. By wife's own testimony, she knew by October of 1994 that husband had an intimate relationship with another woman, and that this had been going on for two and one-half years.

d. Husband married his second wife on October 12, 1996, after having had a relationship with her of approximately three years, and long before the marriage in this action was declared.

e. The parties' son, Kelly, had no idea whether his parents had joint or separate bank

accounts, or how they managed their finances after their official divorce in 1985.

f. Though wife would "help in the business" operated by husband, she was never a signator on any of his business accounts.

g. When asked a question about her marital status at the trial, wife testified that she had not "remarried" since her divorce in 1985.

h. In 1985, the parties had a residence in Salt Lake County, State of Utah. This home was sold after the 1985 divorce, and the proceeds used to build a residence on a family farm in Summit County, State of Utah. The parties lived at the "family farm" for about a year, and then the wife purchased a home back in Salt Lake County, Utah. She purchased this home, which the parties occupied from the late 1980s

until their separation, in her own name, without the husband being listed on the title. Eventually, she sold the property to husband, in a real estate sales transaction, for $22,500.00 in cash and his payment of some of her debts.

i. Within the 1985 decree of divorce, the wife was awarded certain rental properties in Summit County, State of Utah. These had been jointly owned and operated before the official divorce. After the 1985 divorce, the title of these properties changed exclusively to the wife and remained that way. Those properties were sold by her in 1993. By her own testimony, the proceeds from that sale went solely into her name and not into any account or property controlled by her former husband.

j. At various times after the 1985 divorce, wife complained to the husband that she needed help repairing or improving the rental properties. His response, according to wife, was to offer to buy the property from her, but otherwise to refuse to perform the repairs. Eventually, she sold these properties to third parties.

k. The parties signed a written contract between themselves in June of 1992, admitted at trial as Exhibit P4. That agreement makes reference to the parties' being "single" persons and makes reference to their desire to separate their property and debts. Pursuant to that agreement, they closed their joint bank accounts.

l. Husband filed bankruptcy in Utah in the late 1980s. By the wife's own testimony, he was identified in that bankruptcy as a "single" man, and she did not join in the proceeding.

m. Though the parties shared their household expenses after 1985 to some extent, they never kept track of how these expenses were shared. The expenses were paid out of the wife's separate account, the husband's separate account, or, until the joint account was closed, out of a joint account.

n. According to the wife, whenever she received money, as from the sale of the rental properties or from the sale of the Salt Lake County home to her former husband, she put those funds in a separate account, on which her husband was not a signator.

o. The parties each signed a Last Will and Testament in 1991. These wills identified each of the parties as being "single."

p. In September of 1996, the wife wrote a letter to the husband. The letter was introduced in the trial as Exhibit 32. A copy of that letter was attached to the appendix in both state court appeals in this matter. In that letter, she stated to her former husband: "I feel that if we were married, it would make a difference.... I'd give anything in the world if you would just take me away and get married." She also stated in the letter: "...I know it's not me you want to marry."

q. The wife also tape recorded a voice mail message to husband in November, 1995 in which she stated that all she wanted was "a ring and a piece of paper." This was admitted

at trial as Exhibit 33. The wife further went on to state that she wanted husband to marry her.

r. The wife testified that, when she moved out of the Salt Lake County residence for the last time on August 28, 1996, she reported to police at the scene that she had been "divorced for quite some time," and that she and Cecil E. Clark were "living together."

s. The wife dated another man in the State of Utah between 1991 and 1994.

t. The husband's business partner testified that he (the partner) asked wife to do something for husband's business in September, 1995. In response, she became upset and told the witness that she shouldn't be doing anything with the business because she and Mr. Clark

were "not even married," and they had been divorced for "ten years."

In the face of all of this, the trial court and both appellate courts in Utah were somehow able to find "considerable evidence" that husband contracted to become married to wife in a non-solemnized marriage, and that Cecil E. Clark "consented" to be married to Linda Kay Clark.

ARGUMENT

The trial court erred in this matter and the Utah Court of Appeals and Utah Supreme Court erred in affirming the trial court's determination, that a "common law" marriage existed between the parties, because there has never been any evidence produced that the husband ever intended to become married to Respondent, after their divorce in 1985. Nor is there is evidence he consented to become married to or contracted to marry the Respondent. In fact, there is strong evidence from the wife's own tape recorded

statement, her own handwritten letter, and her own Last Will and Testament, that she did not consider herself to be married to the husband after their 1985 divorce.

The Utah statute in issue sets forth a number of elements which must be proven at trial, in order to establish the existence of a non-solemnized marriage. These required elements include that there exist a contract between two consenting parties.

Neither the trial court nor the Utah appellate courts have found a particular point in time or circumstance at which Cecil E. Clark contracted or consented to become married to the Respondent.

In order to pass federal constitutional muster, Utah's statute must be interpreted to require the finding of a specific intent on the part of a person to become married by means of the "common law" statute. The statute must require the finding of a specific point in time at which one

party consented to the other to become married. In other words, the statute must be interpreted to be truly and only a substitute for a traditional solemnized marriage. It must be interpreted, if it is to be constitutional, only to allow persons who intend specifically to become married to each other, to do so through that statute, without otherwise obtaining a marriage license or participating in a traditional ceremony. It must be interpreted as a safety valve for persons who wish to become married, but because of religious or philosophical beliefs about government-issued marriage licenses or, because of health problems or geographic limitations, are unable to avail themselves of traditional avenues to marriage. Otherwise, the statute allows the critical relationship of husband and wife to be formed by trickery, or by accident, neglect, or mere force of habit. To allow the creation of a marriage relationship under such

circumstances violates the Petitioner's constitutional rights to govern his own family relationships and associations.

At this point in history, it is extremely common for adults who are not married to each other to live jointly, with consent, in a cohabitation relationship. It is common for married women to maintain their own surnames. It is common for married persons to maintain separate bank accounts and investments, or for non-married persons to maintain joint bank accounts and joint investments. Married persons may maintain separate households in "bi-coastal" relationships. Against this stage of modern life, it is mandated under the federal constitution that persons who are to become married to each other do so intentionally, giving their full consent to the marital union. Otherwise, common law marriage statutes (including the Utah statute as it has now been interpreted in this case), allow persons to

become married by the deceit of another, or by accident, or by a mere course of habit.

This Court has long recognized that issues of privacy, family life and personal autonomy, as well as associational rights, are protected by federal constitutional guarantees of due process, by First Amendment guarantees of a right to freedom of association, and by a penumbra of constitutional privacy and autonomy rights. As early as the decision in Meyer vs. Nebraska, 262 U.S. 390 (1923), this Court recognized that, though the "liberty" guaranteed in the United States Constitution often cannot be definitely described, it includes "Without doubt,... the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children,..." Therefore, the right of Petitioner here to determine not to marry, and to determine how he shall establish his home is something

protected by the United States Constitution. The State of Utah does not have the power, under its "common law" marriage statute, to look backwards in time and to determine that a person, by a course of conduct, such as use or non-use of surnames, commingling or separate maintenance of bank accounts, or cohabitation under the same roof, has somehow retroactively created a marriage. To determine that a marriage has been created, in hind sight, without the specific consent of a party to that marriage, is a violation of liberties protected under our Constitution.

In Griswold vs. Connecticut, 381 U.S. 479 (1965), this Court considered the constitutionality of Connecticut's prohibition against prescribing contraceptive devices to married persons. In that decision, this Court again reaffirmed that many specific activities, such as the right to educate one's child in a school of the parent's choice [Pearce vs. Society of Sisters, 268 U.S. 510 (1925)]; or the

right to study any particular subject or any foreign language (Meyer, supra); are not specifically described within the Constitution, yet this Court has time and time again construed the Amendments and general guarantees of liberty and due process to protect these activities. In Griswold vs. Connecticut, supra, this Court found to exist a penumbra of rights set forth in the First Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Ninth Amendment and the Fourteenth Amendment of the Constitution, creating a "zone of privacy" which could not be invaded by the government. In Griswold vs. Connecticut, supra, this Court found: "marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as

noble a purpose as any involved in our prior decisions." In Griswold, this Court went on to protect the marital relationship from government intrusion. The determination of the Utah Court to impose a marital relationship, against the will of a party, flies in the face of this precedent.

In Paris Adult Theater vs. Slaton, 413 U.S. 49 (1973), this Court again recognized an individual right of privacy guaranteed by our Constitution and recognized that that right of privacy encompasses and protects the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. These are exactly the sectors of personal and private life attacked by the Utah statute, as interpreted, and the holding of the Utah Supreme Court.

Numerous decisions of this Court support the Petitioner's claims here, including Cleveland Board of Education vs. LaFleur, 414 U.S. 632 (1974).

Because the federal constitution does not contemplate persons being forced to become married against their will, nor being retroactively determined to be against their will, this matter is a critical one for this Court's intervention.

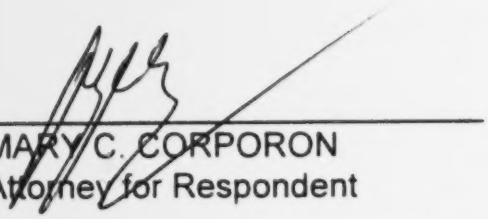
CONCLUSION

The Utah Supreme Court erred in affirming the Utah Court of Appeal's and the trial court's decisions that Petitioner had somehow become married to Respondent, absent his specific consent and contract to become married. This violates the Petitioner's due process, associational and privacy rights as guaranteed by the United States Constitution, calling for an exercise of this Court's supervisory power.

RESPECTFULLY SUBMITTED this 1st day of

October, 2001.

CORPORON & WILLIAMS, P.C.



MARY C. CORPORON
Attorney for Respondent

APPENDIX

IN THE SUPREME COURT OF THE STATE OF UTAH

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Linda Kay Clark,
Plaintiff and Respondent,

v.

Cecil E. Clark,
Defendant and Petitioner.

No. 20000276

FILED

June 5, 2001

Third District, Salt Lake County
The Honorable Leslie Lewis

Attorneys: Suzanne Marelius, Salt Lake City, for plaintiff
Mary C. Corporon, Salt Lake City, for defendant

On Certiorari to the Utah Court of Appeals

DURHAM, Justice:

¶1 Defendant Cecil E. Clark (Cecil) seeks certiorari review of the court of appeals' memorandum decision in favor of plaintiff Linda Kay Clark (Linda). The court of appeals affirmed the trial court's finding of an unsolemnized marriage pursuant to section 30-1-4.5 of the Utah Code and reversed the trial court's granting of Cecil's

motion for relief from judgment due to lack of jurisdiction. We affirm.

BACKGROUND

¶2 Linda and Cecil had an eighteen-year solemnized marriage, which ended in divorce on August 27, 1985. Just a few months after the divorce was granted, Linda and Cecil resumed living together in late October or early November 1985. They continued to live together for a period of eleven years until August 1996. From December 1995 until June 1996, Linda resided in a separate apartment. She moved back in with Cecil, however, in June 1996, and they continued to live together until August 28, 1996, when a final separation occurred.

¶3 In October 1996, Linda brought this action against Cecil to establish an unsolemnized marriage, obtain a divorce, and divide marital assets. Cecil, however, delayed in providing discovery in the matter, even after two

motions to compel. Therefore, Commissioner Lisa A. Jones held a hearing on April 17, 1997, and ruled that Cecil's failure to provide discovery would result in his pleadings being stricken and a default judgment entered against him if complete discovery was not forthcoming.

¶4 On May 15, 1997, in response to Commissioner Jones' ruling, Linda submitted a set of findings of fact and conclusions of law, declaration of marriage, and decree of divorce, which were placed in the record, unsigned. On the same day, Linda filed a motion for entry of decree and findings and a notice to submit for decision. Commissioner Jones stayed Linda's motion on June 30, 1997, and ordered that records sought by Linda be delivered to Linda's counsel the following day. The next day, July 1, 1997, Commissioner Jones certified the case for trial for determination of, among other things, whether an unsolemnized marriage existed, and to consider Cecil's

contempt for "violation of restraint on assets." To expedite matters, Commissioner Jones suggested, in her minute entry, that the district court hold a bifurcated hearing to determine the marriage issue, noting that "the statutory limit on establishment of a marriage is looming."

¶5 On the date of trial, August 13, 1997, the district court found in a minute entry that "the statutory requirements have been met and a common-law marriage existed up to August of 1996 when the parties separated." However, the findings of fact and conclusions of law were not entered at that time.

¶6 The record indicates that counsel for Linda prepared findings of fact and conclusions of law, which were sent to opposing counsel on August 26, 1997. The documents had to be revised, however, based on changes requested by Cecil's counsel. The revised copies were sent for approval to Cecil's counsel on September 10, 1997, but

Cecil did not give approval. Thereafter, as no objection had been filed, counsel for Linda transmitted the documents to the court, which entered the findings and declaration of marriage on September 29, 1997. The findings specified that the Clarks' unsolemnized marriage had ended on August 28, 1996.

¶7 After the findings and declaration of marriage were entered, Cecil moved the court for relief from the judgment,[1] claiming that the court lacked jurisdiction

---

[1]As the court of appeals notes in its memorandum decision in this matter, although Cecil termed his motion a motion to dismiss, "it is properly considered as a motion under Rule 60(b)(4) [motion for relief from void judgment] and we treat it accordingly." Clark v. Clark, 2000 UT App 54, n.3 (mem.) (citing Grossen v. DeWitt, 1999 UT App 167, ¶ 6, 982 P.2d 581; In re Baby Boy Doe, 894 P.2d 1285, 1288 (Utah Ct. App. 1995)).

because the court order establishing a common law marriage was not entered within one year following the termination of the Clarks' relationship as required by section 30-1-4.5. Subsection two provides in relevant part that "[t]he determination or establishment of a marriage under this section must occur during the relationship described in subsection (1), or within one year following the termination of that relationship." Utah Code Ann. § 30-1-4.5(2)(1998) (emphasis added). The district court granted Cecil's motion, concluding that it was without jurisdiction to enter the order later than one year after the termination of the relationship. Both parties appealed to the court of appeals.

STANDARD OF REVIEW

¶8 "On a writ of certiorari, we review the decision of the court of appeals, not that of the district court, and apply the same standard of review used by the court of appeals." Coulter & Smith, Ltd. v. Russell, 966 P.2d 852,

855 (Utah 1998) (citing Utah Code Ann. § 78-2-2 (3) (a) (1996); Hebertson v. Willowcreek Plaza, 923 P.2d 1389, 1392 (Utah 1996); Butterfield v. Okubo, 831 P.2d 97, 101 n.2 (Utah 1992)). We review the court of appeals' decision for correctness. See Bear River Mut. Ins. Co. v. Wall, 1999 UT 33, ¶ 4, 978 P.2d 460 (citing State v. Harmon, 910 P.2d 1196, 1199 (Utah 1995)). The correctness of the court of appeals' decision turns on whether it accurately reviewed the trial court's decision under the appropriate standard of review. See Newspaper Agency Corp. v. Audit Div., 938 P.2d 266, 267 (Utah 1997).

ANALYSIS

I. ADJUDICATION REQUIREMENT OF SECTION 30-1-4.5

¶9 Subsequent to oral argument to the court of appeals in this case, we decided In re Marriage of Gonzalez, 2000 UT 28, 1 P.3d 1074, which construed

subsection two of section 30-1-4.5 as "requir[ing] only the filing of a petition for adjudication of marriage within one year after the termination of the relationship." Id. at ¶30 (emphasis in original). Gonzalez raised the question of whether the legislature intended the unusual language of section 30-1-4.5 to be construed contrary to conventional statutes of limitation that limit the period to commence an action, not the period within which a court must reach final judgment. See id. at ¶ 24. We ruled that "[t]he legislature should not be deemed to have created such a potentially unfair rule without clear and convincing language evidencing its intent to do so . . . ." Id. (noting that "the ambiguities created in this statute appear to be the result of nothing more than inartful drafting"). Therefore, we turned to the legislative intent and purpose in enacting the statute. See id. at ¶ 23 ("When doubt or uncertainty exists as to the meaning or application of an act's provisions, an analysis of

the act in its entirety should be undertaken and its provisions harmonized in accordance with the legislative intent and purpose." (citing Craftsman Builder's Supply v. Butler Mfg., 1999 UT 18, ¶ 25, 974 P.2d 1994)).

¶10 As we explained in Gonzalez, the Utah Legislature enacted section 30-1-4.5 with the aim of preventing welfare fraud by giving Utah's Office of Recovery Services an avenue to prevent exclusion of a common law spouse's income when applying for government benefits. See Gonzalez, 2000 UT 28 at ¶ 21 (citing Floor Debate, remarks of Norman Angus, Director of State Social Services Admin., 47th Utah Leg., Gen. Sess. (Feb. 17, 1987) (Sen. Recording No. 75)). The one-year adjudication requirement was an apparent attempt "to protect the parties to a putative marriage from fraud or mistake due to long delays in adjudication." Id. (emphasis in original). It seems "the Legislature was concerned with situations in which the

couple never intended to be married but where, years later, most likely at the time one of them dies, [someone not a party to the marriage] is trying to prove the existence of such a marriage." Id. at ¶¶ 21-22 (citing Floor Debate, remarks of Sen. Lyle Hillyard, 47th Utah Leg., Gen. Sess. (Feb. 19, 1987) (Sen. CD No. 81B)).

¶11 Therefore, the legislative purpose giving rise to the one-year adjudication requirement has nothing to do with a case such as this where an individual attempts to establish an unsolemnized marriage in order to divide marital assets. See id. at ¶ 24 (noting that legislative purpose is unrelated to case where individual attempts to establish unsolemnized marriage to claim insurance benefits). We further explained that a statute of limitation not tolled by the filing of an action created potential unfairness and would be subject to constitutional challenge, because "an action filed in a timely manner could still fail the

limitation period due to delays in discovery or a court's crowded docket." Id. We specifically relied on our obligation to construe statutes to avoid potential unconstitutionality. See id. at ¶ 30. The construction urged by the intervenor in Gonzalez would have raised questions of equal protection, due process, and separation of powers, all of which were avoided by our reading. If, indeed, we misconstrued legislative intent, it is to be expected that the legislature will tell us so. Therefore, under Gonzalez, an action to establish an unsolemnized marriage is timely if filed within one year of the termination of the relationship. Id.

II. STATUTORY REQUIREMENTS OF UNSOLEMNIZED MARRIAGE

¶12 Cecil challenges the court of appeals' affirmance of the trial court's finding that Linda had met the statutory requirements of section 30-1-4.5. Section 30-1-

4.5(1) sets forth the following requirements to establish an unsolemnized marriage:

> (1) A marriage which is not solemnized according to this chapter shall be legal and valid if a court or administrative order establishes that it arises out of a contract between two consenting parties who:
>
> (a) are capable of giving consent;
>
> (b) are legally capable of entering a solemnized marriage under the provisions of this chapter;
>
> (c) have cohabited;
>
> (d) mutually assume marital rights, duties, and obligations; and
>
> (e) who hold themselves out as and have acquired a uniform and general reputation as husband and wife.

Utah Code Ann. § 30-1-4.5(1)(1998).

¶13 Cecil argues that Linda failed to meet her burden of proving the following statutory requirements: (1) existence of a contract and consent of Cecil; (2) mutual

assumption of marital rights, duties, and obligations; and (3) holding themselves out as, and acquisition of a reputation as, husband and wife. See id. § 30-1-4.5(1), (1)(a), (d), (e). In addition, Cecil claims that Linda failed to establish cohabitation for the period October 1, 1985 through August 28, 1996. See id. § 30-1-4.5(1)(c).

¶14 Cecil argues there was insufficient evidence produced at trial to support the trial court's findings. His challenge involves a review of the trial court's application of statutory requirements to factual findings and is a mixed question of law and fact. See Platts v. Parents Helping Parents, 947 P.2d 658, 661 (Utah 1997). We apply the same standard used by the court of appeals: a trial court's findings of fact will not be reversed unless they are clearly erroneous, and the trial court's application of the statute to those findings will not be reversed absent an abuse of discretion. See id.; Utah R. Civ. P. 52(a).

¶15 We agree with the court of appeals that there was considerable evidence adduced at trial on which the trial court could base its findings. First, there was ample evidence that Cecil consented to an unsolemnized marriage and that the Clarks mutually assumed marital rights, duties, and obligations. Cecil and Linda filed joint income tax returns; established joint checking and credit accounts; jointly purchased real estate holdings, including a shared residence; jointly purchased vehicles and other personal belongings together; shared household expenses; and slept in the same bed. Given the substantial amount of evidence showing the parties both consented to a marital relationship, the court of appeals was correct in affirming the trial court's findings.

¶16 Second, there was sufficient evidence establishing that Linda and Cecil held themselves out and had acquired a reputation as husband and wife. For

example, Linda retained her married name of "Clark," and both Linda and Cecil routinely introduced each other as husband and wife. Furthermore, at least two witnesses, including a neighbor and a former daughter-in-law, believed the Clarks were married. Those witnesses made that assumption because the Clarks were the "[Clark children's] mom and dad" and because the Clarks "acted like a husband and wife would act." Again, the court of appeals was correct in affirming the trial court's finding that the Clarks held themselves out and had a reputation as husband and wife.

¶17 Finally, there was ample evidence supporting the trial court's finding of cohabitation. In his attempt to overturn the trial court's factual findings on this point, Cecil claims that during the period from October 1985 until August 28, 1995, he and Linda lived together "off and on." Cecil, however, cites to nothing in the record to support his

assertion. Further, even though the parties had a brief separation during December 1995 until June 1996, the record shows that during that time, Cecil stayed overnight at Linda's apartment, sent her cards expressing his love and affection for her, and contributed to her expenses including car repairs and rent. Cecil also argues that both Cecil and Linda had intimate relationships with other people, which evidence refutes the trial court's finding of cohabitation. Essentially, Cecil only asserts his own view of the evidence, and claims the court of appeals erred in failing to reweigh the evidence in his favor. We disagree. The court of appeals was correct in affirming this finding.

¶18 We agree with the court of appeals that the trial court's factual findings show that Linda met each of the required elements for establishment of an unsolemnized marriage; therefore, the trial court did not abuse its discretion in its application of the statute. The court of

appeals was correct in affirming the trial court's ruling that an unsolemnized marriage was established.

III. MOTION FOR RELIEF FROM JUDGMENT

¶19 Cecil challenges the court of appeals' reversal of the trial court's granting of Cecil's motion for relief from judgment. In reviewing the trial court's interpretation of section 30-1-4.5, the court of appeals applied a correctness standard, see Clark v. Clark, 2000 UT App 54 (mem.), and we apply the same standard. Relying on In re Marriage of Gonzalez, 2000 UT 28, ¶ 30, 1 P.3d 1074, the court of appeals ruled that the trial court had jurisdiction to enter the order establishing an unsolemnized marriage because Linda filed her petition well within one year of the termination of the marriage. See Clark, 2000 UT App 54.

¶20 We note that in Gonzalez we did not decide the issue of whether the requirement of section 30-1-4.5(2) requiring only the filing of an action, would apply to an

action involving a divorce. See, 2000 UT 28 at ¶ 29 n.7, 1 P.3d 1074. We distinguished Bunch v. Englehorn, 906 P.2d 918 (Utah Ct. App. 1995), where the court of appeals held that, in a case involving a divorce, a petition for establishment of marriage must be brought and decided within a year of the relationship's termination. See Gonzalez, 2000 UT 28 at ¶ 29 n.7 (citing Bunch, 906 P.2d at 920-21). In this case, however, unlike Gonzalez, Linda petitions for both establishment of an unsolemnized marriage and a divorce. Therefore, now that the issue is squarely before us, we expressly overrule Bunch v. Englehorn, 906 P.2d 918, and hold that Gonzalez applies equally to actions to establish a marriage and to actions where establishment is sought in order to obtain a divorce.

¶21 In the instant case, because the trial court found that the Clarks' unsolemnized marriage terminated on August 28, 1996, the statute of limitation began running on

that date. Therefore, Linda's filing of her action in October 1996 was well within the statutory period. As we noted in Gonzalez, we did not, and still do not, believe that the legislature meant to place the burden of crowded court dockets and other matters completely beyond the petitioner's control, solely on the petitioner. See Gonzalez, 2000 UT 28 at ¶ 24.

¶20 In fact, the procedural history of Linda's action against Cecil clearly demonstrates the unfairness of a statute of limitation not tolled by the filing of an action. Linda filed her action in October 1996, within two months of the termination of the marital relationship. However, Cecil delayed discovery for at least two months, even ignoring two motions to compel. During that time Linda diligently attempted to obtain an order establishing an unsolemnized marriage. The trial was held and findings were made within one year of the termination date. However, due to further

delays caused at least in part by Cecil, the final order was not entered until later than one year past the termination date of the unsolemnized marriage.

¶23 Based on our precedent in Gonzalez and our review of the merits, we affirm the court of appeals' decision in all respects.

WILKINS, Justice, concurring in the result:

¶24 I concur in the result reached in the main opinion. I write separately to explain my concurrence.

¶25 The court's decision today relies upon our decision in In re Marriage of Gonzalez, 2000 UT 28, 1 P.3d 1074, issued just over one year ago. Under the Gonzalez holding I see no other possible result. In both this case and Gonzalez, the party seeking to establish the marriage was afforded an opportunity to do so that began when the relationship with their partner began, and ended one year after the termination of that relationship. In both cases, the

limitation imposed under section 30-1-4.5 encompassed a period of years, not just the single year following the end of the relationship. It included all of the time the parties chose to live as "married" persons.

¶26 The statute interpreted in Gonzalez and again applied here, section 30-1-4.5 of the Utah Code, requires that the "determination or establishment of a marriage under this section must occur during the relationship . . . or within one year following the termination of that relationship." Utah Code Ann. § 30-1-4.5 (2) (1998). By its terms, it appears not only to require the filing of such an action, but also determination or establishment of the relationship within that time. Had I been part of the Gonzalez court, I would have concurred in the dissenting opinion of Justice Russon. See Gonzalez, 2000 UT 28 at ¶¶ 51-61, 1 P.3d 1074. I would have agreed that the language of the statute was eminently clear: To receive the benefits of the law relating to married

persons in this state, the legislature has required persons either to undertake the legal formalities of marriage required by statute, see Utah Code Ann. §§ 30-1-1 to -39 (1998), or to act with sufficient diligence and foresight to have the marriage determined, conclusively, by a court of competent jurisdiction during the period of the relationship plus one additional year. Neither Juanita Gonzalez nor Linda Clark did so. Both began so late that the process could not be completed within the statutory limitation.

¶27 However, in Gonzalez we held that the requirements of section 30-1-4.5 are met by the filing of such an action within the term of the relationship plus one year. Gonzalez, 2000 UT 28 at ¶ 25, 1 P.3d 1074. Until changed by this court or by action of the legislature, that is the law. And while a majority of the current members of this court may well agree that Gonzalez was incorrectly decided,

there are higher values at stake than the correction of what might be seen as a single erroneous holding.

¶28 In a society controlled by the rule of law, citizens are entitled to a considerable measure of stability in that law. This is especially true when the law is made by judges as opposed to the legislature. It is the legislature to which our citizens have a general right of redress and petition when they feel the law has been incorrectly decided. It is the legislature that is designed to seek public input on issues of public policy. Courts are ill-suited to evaluate and impose broad policy mandates on society. Notwithstanding the contrary belief of many, including many judges, I am of the opinion that it is not our role to correct perceived errors in legislative policy. Our task is to apply statutory enactments as best we are able to understand them, and precisely as written if possible. This is true even if literal application of the statutory language does not produce a

result we admire, or would advocate if we were members of the legislature. If we find the result to be unsatisfying, our obligation ends in applying the language as written, and pointing out the possibility of modification to the legislature for its consideration. Unless statutory language violates the constitution, courts have no obligation to "fix" anything the legislature chooses to do. That is better left to the legislative process and its closer relationship with citizens.

¶29 However, the case before us is controlled by Gonzalez. The court has already spoken as to the interpretation of the limitation period contained in the statute. To me, the only thing worse than a court seeking to act as a legislative body in modifying the law is a court that cannot be counted on to maintain stability and consistency in application of the law. Once this court has spoken on an issue, changing that pronouncement should occur only when faced with circumstances clearly establishing that the

prior rule was erroneous, is not easily subject to legislative remedy, and has failed the test of time. The decision in Gonzalez is barely a year old, is easily subject to legislative correction if desired, and appears to have worked little harm to society generally to date. Although I think it was incorrect at the time, I see no compelling reason to change the prior rule announced in Gonzalez, and I therefore concur in the result reached in the main opinion. I do so purely on the basis of stare decisis, not on the basis of agreement with the logic or policy expressed.

¶30 Justice Durrant concurs in Justice Wilkins' concurring opinion.

RUSSON, Associate Chief Justice, dissenting:

¶31 I dissent for the same reasons I dissented in In

re Marriage of Gonzalez,[1] the case relied upon by the majority opinion. We may not like the result of the statute in question, but it is not our function to rewrite the statute for a result more to our liking. The statute in question is perfectly clear: In order for an unsolemnized marriage to be legal and valid, a court or administrative order recognizing such marriage must occur during the relationship or within one year following termination of that relationship.[2] The exact wording of the statute states:

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[1]2000 UT 28, ¶52, 1 P.3d 1074 (Russon, J., dissenting, joined by Howe, C.J.).

[2]Obviously, the reason for the statute is to require an order establishing marriage during the relationship, but protect children conceived during the relationship but born after its termination.

> The determination or establishment of a marriage under this section [by court or administrative order] must occur during the relationship described in subsection (1), or within one year following the termination of that relationship . . . .

Utah Code Ann. § 30-1-4.5(2) (1998) (emphasis added).

¶32 Despite the plain language of the above statute, the majority opinion today reaffirms this court's holding in In re Marriage of Gonzalez, construing subsection two of section 30-1-4.5 as requiring only the filing of a petition for adjudication of marriage within one year after the termination of the relationship.[3] In doing so, the majority

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[3] I fully understand and respect the principle of stare decisis, which gives stability to our body of law. However, we should not perpetuate a law that is clearly wrong for the sake of stare decisis, especially where the said case law is less than one year old and was a three-two decision. This court has "not hesitated ... to reverse case law when we are

firmly convinced that we have erred earlier." Staker v. Ainsworth, 785 P. 2d 417, 424, n.5 (Utah 1994); State v. Tuttle, 713 P.2d 703, 704 (Utah 1985).

As Justice Felix Frankfurter aptly noted:

> We recognize that stare decisis embodies an important social policy. It represents an element of continuity in law, and is rooted in the psychologic need to satisfy reasonable expectations. But stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience

opinion ignores the well-accepted principle of statutory interpretation that courts must look to the plain language of the statutes and apply the same regardless of whether a better result could be obtained by rewording the statute. Indeed, this court has consistently held that

> "[t]he primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purpose the statute was meant to achieve." Sullivan v. Scoular Grain Co. of Utah, 853 P.2d 877, 880 (Utah 1993). To discover that intent, we look first to the plain language of the statute. State v. Larsen, 865 P.2d 1355, 1357 (Utah 1993) . . . . "Only when we find ambiguity in the statute's plain language need we seek guidance from the legislative history and relevant policy

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> . . . .
>
> This Court, unlike the House of Lords, has from the beginning rejected a doctrine of disability at self-correction.

Helvering v. Hallock, 309 U.S. 106, 119, 121 (1940).

considerations." World Peace Movement v. Newspaper Agency Corp., 879 P.2d 253, 259 (Utah 1994).

Harmon City, Inc. v. Nielsen & Senior, 907 P.2d 1162, 1167-68 (Utah 1995) (emphasis added); see also, e.g., Dairy Prod. Servs., Inc. v. Wellsville, 2000 UT 81, ¶ 20, 13 P.3d 581 ("When we interpret a statute, we must look first to the statute's plain language to determine the legislative intent and we look no further if the language is unambiguous on its face."); State v. Burns, 2000 UT 56, ¶ 25, 4 P.3d 795 ("[O]ur primary goal in interpreting statutes is to give effect to the legislative intent, as evidenced by the plain language, in light of the purpose the statute was meant to achieve. We need look beyond the plain language only if we find some ambiguity." (citation omitted)); State v. Thurman, 911 P.2d 371, 373 (Utah 1996) ("When interpreting a section of the Utah Code, we are guided by the principle that a statute is generally construed according to its plain language. Only if

we find ambiguity in the statute's plain language need we resort to other methods of statutory interpretation." (citation omitted)); Hanchett v. Burbidge, 59 Utah 127, 135, 202 P. 377, 380 (1921) ("When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.").

¶33 Moreover, the above principles of statutory interpretation have been consistently applied in other jurisdictions. As is well-stated in American Jurisprudence:

> That a statute will produce a hardship which probably was not within the contemplation of the legislature is not sufficient basis for departing from the terms thereof. A court may not extend a statute, or construe it otherwise than as written, to avoid a hardship. If the law as written works a hardship in a special class of cases, the remedy is to be effected by the legislature, and not by judicial action in the guise of interpretation. Hence, where the language of a statute is clear and unambiguous and the intention plain, it is the duty of the court to expound the statute as it stands, even if the consequence is a hardship,

or if the statute is thereby rendered susceptible to abuse.

73 Am. Jur. 2d Statutes § 264 (1974) (emphasis added); see also Deputy v. Du Pont, 308 U.S. 488, 498, 84 L. Ed. 416, 60 S. Ct. 363 (1940) (stating that the plain meaning of a statute cannot be sacrificed for the exigencies of a hard case); Rigopoulos v. Kervan, 140 F.2d 506, 507 (2d Cir. 1943) (stating that harshness is no escape from plain statutory language); 82 C.J.S. Statutes § 318 (1999) ("If the language of the statute is clear and expresses the intention of the legislature, the statute must be construed to give effect to that intention regardless of the consequences, even though it may cause a hardship.").

¶34 Accordingly, although section 30-1-4.5's requirement relating to conclusion, rather than commencement, of legal proceedings may be unusual, its language is clear and unambiguous--leaving no room for

construction. Therefore, because it is undisputed that the court order establishing a common law marriage in the instant case was not entered within the one-year adjudication period set forth by section 30-1-4.5(2), I would overrule our recent decision in In re Marriage of Gonzalez and, in doing so, reverse the court of appeals' decision concerning Cecil's motion for relief from judgment due to lack of jurisdiction.

¶35 Chief Justice Howe concurs in Associate Chief Justice Russon's dissenting opinion.

CERTIFICATE OF MAILING

I hereby certify that on June 5, 2001, a true and correct copy of the foregoing OPINION was deposited in the United States mail to the party(ies) listed below:

MARY C. CORPORON
CORPORON & WILLIAMS PC
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SALT LAKE CITY, UT 84102-1305

SUZANNE MARELIUS
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and a true and correct copy of the foregoing OPINION was hand delivered to a personal representative of the court(s) listed below:

Honorable J. DENNIS FREDERICK
THIRD DISTRICT, SALT LAKE
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BY "s/_____."
Deputy Clerk

Case No. 20000276-SC
THIRD DISTRICT, SALT LAKE, 964904244

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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LINDA KAY CLARK,

Plaintiff,

v.

CECIL E. CLARK,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Case No. 964904244 DA

Judge: J. Dennis Frederick

---------oo0oo----------

The above-entitled matter came before the Court for trial on August 13, 1997, the Honor J. Dennis Frederick presiding. Plaintiff was present in person and represented by counsel, Suzanne Marelius. Defendant was present in person and represented by counsel, Dean N. Zabriskie.

The Court received and approved the Stipulation of the parties that in the event a Declaration of Marriage is made, that the marital assets would be jointly appraised and the parties would enter binding arbitration to divide marital assets. On the issue of whether a common law marriage existed, the Court heard the testimony of witnesses, received evidence, reviewed the Court file and record herein and being thus well advised in the premises, with good cause appearing does make and enter the following:

FINDINGS OF FACT

1. The Court has considered evidence on the issue of whether the parties have met the requirements for a common law marriage set forth in the statute at UCA §30-1-4.5. The Court finds that the evidence establishes that the parties have met all legal requirements of that statute and should be declared married.

2. On the common law marriage elements, the Court finds that the evidence establishes the following:

a. Both parties to this action are of legal age and capable of giving consent to a marital relationship;

b. The parties to this action are both legally capable of entering into a solemnized marriage and in fact were previously married and divorce from one another by Decree entered in the Third Judicial Court of Summit County, State of Utah on or about August 27, 1985;

c. The parties to this action have cohabited and the Court finds that cohabitation to have commenced on or about October 1, 1985, and continued

until the final separation of the parties on August 28, 1996, when the Defendant changed the locks on the residence and Plaintiff relocated to a separate home;

d. The parties to this action mutually assume marital rights, duties and obligations in numerous ways which will be set forth elsewhere in these findings;

e. The parties to this action mutually held themselves out as wife and husband, and have acquired a uniform and general reputation as wife and husband. Among the evidence supporting this factor is the consistent filing of joint, married income tax returns with the federal and tax authorities from 1985

through 1994 (this return was filed 10-1-95 and was the last tax return filed before the separation).

3. The Court finds that the parties mutually assumed marital rights, duties and obligations and have acquired a general reputation as a married couple and relies on the following specific evidence established at trial:

a. Within a few months of their formal divorce in 1985, the parties commenced cohabitation and consistently lives together until August 28, 1996;

b. The parties built a home together in Coalville, Utah, shortly after resuming cohabitation. They later moved to Magna, Utah with their children and purchased a residence in 1988 on 7492

West Jefferson Road, Magna, Utah. The parties lives in this residence together until the final separation and jointly maintained, improved, paid for and enjoyed the benefits of this home ownership;

c. In late 1985, the parties resumed parenting their children together until they reached the age of majority or were emancipated;

d. The Plaintiff retained the married name of "Clark" and used this throughout the period of cohabitation, with Defendant's knowledge and consent;

e. The Defendant purchased a new set of wedding rings for the Plaintiff in 1989 (Plaintiff's Exhibit 16);

f. The parties established joint credit as a married couple would do with Sears and JC Penney's (Plaintiff's Exhibit 17);

g. The parties established and maintained joint bank accounts for several years during their relationship, in addition to having separate accounts. The Court finds that there was no formal distinction during the relationship of the partes as to whether joint living expenses were paid from separate or joint accounts, and that said funds appear to be entirely commingled (Plaintiff's Exhibit 6, 7, 8 11 and 27);

h. The parties filed joint income tax returns claiming the marital deduction from 1985 through 1994, which was the last

return filed prior to separation. These returns reflect that all property whether titled in the separate or joint names of the parties were described as marital property and both parties shared the tax impact of rental income, depreciation, etc., on such properties without distinction (Plaintiff's Exhibit 5);

i. During the relationship the Defendant established several businesses which were operated together by the parties. These included Sonny's Heating and Air Conditioning, Mark and Sonny's Heating and Air Conditioning, K&S Properties. The Plaintiff worked on a full-time basis in these businesses doing bookkeeping, payroll, tax filings, record keeping,

scheduling, and other general office work. Plaintiff was not paid a formal salary for these services and testified that she was working towards the betterment of the family finances and to augment the value of joint businesses. It is clear that Defendant relies on Plaintiff's ongoing services in this regard and that these businesses are jointly acquired marital assets;

j. During the relationship the parties acquired personal belongings together and acquired real estate together, including the marital residence, the family businesses, a lot on Skyline Drive, rental property in Draper and a four-plex. At various times during the

relationship these assets were titled either in the separate names of the parties or joint names, as circumstances arose;

k. During the relationship in approximately 1991, the parties each prepared a last will and testament which were reciprocal documents where each party left all interest in their property to the other party (Plaintiff's Exhibit 14, 15);

l. During the relationship the parties routinely introduced one another as "husband" and "wife" and in particular, Defendant would make this introduction with the Plaintiff when he hired new employees for his business. The Court finds the testimony of Mr. Jon Nash, a

neighbor and friend of the parties for five years and that he assume the parties were married and did not know that they were not formally married until the time of their separation in December 1995 as credible and reliable evidence on the reputation of the parties as married. The Court finds the testimony of Lisa Hart, the girlfriend of the parties' son since January 19, 1993, and who also stayed with the parties for about three (3) weeks to care for Kelly Clark, that she believed the Clark's were married, based on their conduct and representations to her until Mr. Clark introduced her to a "girlfriend" at a later time, to be credible and reliable

testimony on the conduct and reputation of the parties as married;

m. The parties acquired vehicles together and paid for these vehicles from both joint and separate funds. The evidence establishes that Defendant bought a new 1994 Dodge Ram pickup truck on July 2, 1994, and that Plaintiff paid the $5,000.00 down payment from her separate bank account (Plaintiff's Exhibit 9) which was later repaid to her by the Defendant);

n. During their relationship, the Plaintiff maintained insurance coverage on the Defendant's 1994 Dodge truck and paid for this from her separate account (Plaintiff's Exhibit 10);

o. Shortly after the parties resumed cohabitation, the Defendant restored Plaintiff as the primary beneficiary on his life insurance policy on April 15, 1986 (Plaintiff's Exhibit 12);

p. During the relationship, the parties paid jointly on life insurance for Defendant's mother, Roberta A. Clark, which premiums were paid from joint funds Plaintiff's Exhibit 13);

q. Even during the separation of the parties which began December 1995, during their period of cohabitation, the Defendant would on occasion stay overnight with the Plaintiff and paid her first and last months rent and separate

expenses, such as car repairs from his own funds (Plaintiff's Exhibit 20);

r. Throughout the cohabitation of the parties and as recently as May 1996, on Plaintiff's birthday, the Defendant sent cards expressing his love and affection for the Plaintiff (Plaintiff's Exhibit 21).

4. The parties purchased a marital residence at 7492 West Jefferson Road, Magna, Utah, in 1988. Upon purchase of this residence, it was titled solely in the name of Plaintiff, Linda K. Clark even though the home was purchased with the joint funds of the parties. It is undisputed that this was done to preserve the asset during Defendant's bankruptcy proceedings. Thereafter, the parties entered into a written agreement dated June 26, 1992,

wherein they agreed that Plaintiff would Quit Claim her entire equity and interest in the residence to Defendant for the sum of $22,500.00 payable in installments of $300.00 per month. The parties both testified that Defendant came up with this number based on his own opinion that the home was worth approximately $50,000.00 and that this was a fair value after deduction of certain joint debts. The Defendant may payments under this agreement and often missed payments for as long as ten (10) months. In approximately June 1996, the Defendant made a balloon payment completing the financial terms of this agreement and Plaintiff claims that she entered into this agreement under duress

pressure from the Defendant and that it was never intended to be a true agreement.

5. The Court finds the Plaintiff's claims of duress and intimidation by the Defendant relating to the June 1992, agreement are credible and finds that the agreement is of no force and effect and is void. The Court finds Plaintiff's testimony credible that she would receive the $300.00 payments and would routinely depose those either in the parties join account or her separate account or otherwise use those funds directly for the regular joint expenses of the parties such as groceries. The Court finds Plaintiff to be a timid, unassertive individual who could be easily pressured to enter into such an agreement by the Defendant. The Court finds Defendant to be overbearing and

capable of intimidation towards the Plaintiff. The Court find credible the testimony of the parties' son, Kelly Clark that the Defendant is intimidating and would routinely take advantage of individuals for financial gain. The Court finds clear and convincing evidence that Plaintiff felt compelled to sign this deed and did not have a full and fair opportunity to consult counsel or otherwise reflect on the consequences of her actions. The deed was prepared by Attorney Nolan Olsen, who was the divorce attorney for Defendant and who, for many years, had been the Defendant's friend and business attorney. The Court finds that this was not at arms length, fair transaction and that equity required that the

Agreement and deed be set aside and given no force and effect.

6. Based on the Court finding that the agreement dated June 26, 1992, is null and void, the Court also sets aside the Quit Claim Deed, dated April 10, 1996, by Plaintiff to Defendant, transferring her interest in the marital residence. The Court finds that the marital residence at 7492 West Jefferson Road, Magna Utah, is a joint marital asset of the parties.

7. The Plaintiff is requesting an award of alimony. The Court finds that Plaintiff is currently employed full-time earning $10.00 per hour, which is a gross monthly wage of $1,720.00 and that she has a net monthly income of $1,309.00. The Court finds Plaintiff's Exhibit

26 to be an accurate statement of Plaintiff's income and expenses and finds that Plaintiff's reasonable monthly expenses are $2,409.00 per month. Plaintiff has shown a need for alimony.

8. The Defendant has testified that he is unaware of his current income. The Court recognized Mr. Clark's reluctance to testify as to what his current income is for purposes of alimony, which the Court finds to be troubling and not credible. The evidence has shown inconsistencies in Defendant's statements of his income depending on the purpose for which it is being made, such as an application for credit or for purposes of divorce. The Court finds Plaintiff's Exhibit 39, the Uniform Residential Loan Application a verified

document completed by Defendant, June 20, 1996, to be the best evidence of Defendant's current income and finds that income to be at least $5,376.00 gross per month. It is clear that during the recent cohabitation of the parties, they acquired considerable assets and have had a very comfortable style of living. Plaintiff's Exhibit 30, the loan application completed by Defendant states his net worth to be $477,118.00. It is clear that the Defendant has the ability to pay alimony.

9. The Plaintiff's request for $1,000.00 a month for alimony is appropriate and the Court awards her that amount retroactive to September 1, 1996. Plaintiff is thus awarded a judgment against the Defendant for alimony accumulated during the twelve (12) months

this matter has been pending, in the amount of $12,000.00. This judgment should bear interest at the legal rate of 7.45% per annum until paid. Defendant should commence making ongoing payments of alimony to Plaintiff effective September 1, 1997, which should be paid by the 1st of every month thereafter. Alimony will be payable to Plaintiff until such time as she remarried, cohabits, or until alimony has been paid for a term equaling the length of the marriage of the parties, or until Plaintiff's death, whichever event occurs earlier.

10. Plaintiff has requested costs and attorney's fees. The Court finds Plaintiff has established a need for fees based on her income and the Defendant's income is more than twice that of

the Plaintiff's and he has an ability to pay Plaintiff her reasonable costs and fees. The Court directs the Plaintiff's counsel to submit an Affidavit of Attorney's fees and costs under Rule of Judicial Administration, 4-501 and that Defendant may file any objection to that requires, which the Court will consider under the terms of that Rule.

11. The Court finds that all property acquired during the marital relationship, which extends between October 1, 1985 and the date of the entry of the Divorce to be marital assets. The Court finds those marital assets to comprise at least the heating, cooling and insulation businesses operated by the Defendant, the marital residence on 7492 West Jefferson Road, Magna, Utah, the rental property at

12251 South 500 West, Draper, Utah, the four-plex rental property at 3667 South 3325 West, West Valley City, Utah, the trailer and lot on Skyline Drive in Sanpete County, the life insurance with a cash value on the life of Roberta Clark, the snowmobiles, 4-wheelers, and vehicles consisting of 1988 Lincoln, 1995 Four pick-up truck, and business equipment and vehicles, the wedding rings purchase by Defendant for Plaintiff, the bank accounts and any and all other assets purchased during the appropriate time by both parties. The Court approves the parties stipulation that all assets will be appraised at the joint cost of the parties, with jointly agrees upon appraisers. Thereafter, the parties will mutually select and pay for a mediator or arbitrator to make a final

division of marital assets between the parties. Both parties have agreed to be bound by the decision of that arbitrator.

12. Plaintiff is entitled to return her maiden name of "Hammond."

13. The Court finds that during the marital relationship of the parties, they encountered irreconcilable differences and that a divorce should be granted to Plaintiff to be final upon entry.

Based on the foregoing Findings of Fact, and Court now makes and enters is Conclusions of Law:

CONCLUSIONS OF LAW

1. The Plaintiff is entitled to a Declaration of Marriage based on the finding that the elements of the Common Law Marriage Statute at UCA §30-1-4.5 have been met;

2. The Plaintiff is entitled to a Decree of Divorce from the Defendant on the grounds of irreconcilable differences, said divorce to become final upon entry.

3. The Court should enter such orders regarding alimony, division of assets and liabilities as are consistent with the Findings of Fact.

DATED THIS 29th day of September, 1997.

BY THE COURT:

"s_____
J. DENNIS FREDERICK
Third District Court Judge

Approved as to Form:

_____
DEAN N. ZABRISKIE
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing, **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, this 10 day of Sept, 1997, to:

Mr. Dean N. Zabriskie
Jamestown Square
Hanover Building, Suite 370
3507 North University Avenue
Provo, UT 84604

"s_____

S8\2317.ffc

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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LINDA KAY CLARK,

Plaintiff,

v.

CECIL E. CLARK,

Defendant.

DECLARATION OF MARRIAGE AND DECREE OF DIVORCE

Case No. 964904244 DA

Judge: J. Dennis Frederick

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The above-entitled matter came before the Court for trial on August 13, 1997, the Honorable J. Dennis Frederick presiding. Plaintiff was present in person and represented by counsel, Suzanne Marelius. Defendant was present in

person and represented by counsel, Dean N. Zabriskie. The Court received and approved the Stipulation of the parties that in the event a Declaration of Marriage is made, that the marital assets would be jointly appraised and the parties would enter binding arbitration to divide marital assets. On the issue of whether a common law marriage existed, the Court heard the testimony of witnesses, received evidence, reviewed the Court file and record herein, and having entered its Findings of Fact and Conclusions of Law and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The above-named parties are hereby declared married effective October 1, 1985, having met all elements to establish a common law marriage pursuant to UCA §30-1-4.5.

2. The Plaintiff has established grounds for divorce from Defendant pursuant to irreconcilable differences and Plaintiff is granted a Decree of Divorce to become final upon entry.

3. The written Agreement entered between the parties dated June 26, 1992 pertaining to a division of equity in the marital residence at 7492 West Jefferson Road, Magna, Utah 84044, is hereby declared null and void. The Quit Claim Deed signed by Plaintiff, pursuant to that Agreement transferring her interest in this residence to Defendant, dated April 10, 1996, is hereby set aside and declared null and void. This residence is a joint marital asset of the parties.

4. The Plaintiff is awarded alimony payable by the Defendant in the amount of $1,000.00 per month September 1, 1996. Alimony will be paid by the 1st of every month payable to Plaintiff until such time as she remarried, cohabits, until alimony has been paid for a term equaling the length of the marriage of the parties, or until Plaintiff's death, whichever event occurs earlier.

5. Plaintiff is awarded a judgment for alimony accumulated during the pendency of this matter between September 1, 1996 through August 31, 1997, in the amount of $12,000.00 to bear interest at the legal rate of 7.45% per annum until paid.

6. Plaintiff is awarded all costs and attorney's fees incurred by her in connection with the

above-entitled action. Plaintiff's counsel is directed to submit an Affidavit of Costs and Attorney's Fees pursuant to Code of Judicial Administration Rule 4-501 and Defendant may respond or object accordingly. The Court will determine the amount of fees and costs pursuant to that Rule.

7. The parties are ordered to select a mutually agreed upon appraiser to establish the current value of all marital property including the real estate and businesses established during the marriage. The parties are to pay the costs of these appraisals jointly. The parties are to select a mutually agreed upon mediator or arbitrator to oversee the distribution of marital property. The parties are to jointly pay for this

arbitration and are to cooperate in good faith in that process.

8. The Court finds that the marital estate is encompassed by all property, of every nature, accumulated either in the sole or joint names of the parties during the term of their cohabitation from October 1, 1985 through the date of entry of the Decree of Divorce. The Court finds that this property includes but is not limited to the following: assets that comprise the heating, cooling and insulation businesses operated by the Defendant, the marital residence on 7492 West Jefferson Road, Magna, Utah; the rental property at 12251 South 500 West, Draper, Utah; the four-plex rental property at 3667 South 3325 West, West Valley City, Utah; the trailer and lot on

Skyline Drive in Sanpete County; the life insurance with a cash value on the life on Roberta Clark; the snowmobiles, 4-wheelers, and vehicles consisting of 1988 Lincoln, 1995 Ford pick-up truck, and business equipment and vehicles; the wedding rings purchased by Defendant for Plaintiff; the bank accounts and any and all other assets purcahsed by both parties during the designated time.

9. The parties are to cooperate as need to sign titles, transfer property, and to do other things needed to effectuate the terms of this Decree and implement the Court order herein.

10. Plaintiff is entitled to return to her maiden name of "Hammond."

DATED THIS 29th day of September, 1997.

BY THE COURT:

"s_____
J. DENNIS FREDERICK
Third District Court Judge

Approved as to Form:

_____
DEAN N. ZABRISKIE
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed, a true and correct copy of the foregoing, **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, this 10 day of Sept, 1997, to:

Mr. Dean N. Zabriskie
Jamestown Square
Hanover Building, Suite 370
3507 North University Avenue
Provo, UT 84604

"s_____

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IN THE UTAH COURT OF APPEALS

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Linda Kay Clark, Plaintiff and Appellee,	MEMORANDUM DECISION (Not For Official Publication)
v.	Case No. 971635-CA
Cecil E. Clark, Defendant and Appellant.	Filed (March 2, 2000) 2000 UT App 54

Third District, Salt Lake Department
The Honorable J. Dennis Frederick

Attorneys: Mary C. Corporon and Brian J. Gardner, Salt Lake City, for Appellant
Suzanne Marelius, Salt Lake City, for Appellee

Before Judge Bench, and Orme.

DAVIS, Judge:

Linda Kay Clark (Linda) and Cecil E. Clark (Cecil) brought separate appeals from the trial court rulings during Linda's action to establish a common law marriage and

receive a divorce. Both appeals were consolidated and we render the instant decision disposing of them.

The trial court's interpretation of a statute and its ultimate determination of whether it has subject matter jurisdiction are questions of law that we review for correctness. See Schwenke v. Smith, 942 P.2d 335, 336 (Utah 1997).

Subsequent to oral argument in this case, a majority of the Utah Supreme Court decided In re Marriage of Gonzalez, 2000 UT 28, ¶30 (plurality opinion); id. at ¶48 (Zimmerman, J., concurring). Notwithstanding the plan language of Utah Code Ann. §30-1-4.5(2) (1998), see Gonzalez, 2000 UT 28 at ¶52 (Russon, J., dissenting)[1] and

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[1]Justice Russon stated:

> [T]he trial court did not err in dismissing Gonzalez's petition for failure to meet the jurisdictional time

this court's decision in Bunch v. Englehorn, 906 P.2d 918, 920-21 (Utah Ct. Appl. 1995) (holding that a common law marriage must be established by court or administrative order entered within one year of the relationship's termination), the Gonzalez court concluded that section 30.1.4.5's time restriction "requires only the filing of a

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> limitation set forth in Utah Code Ann. §30-1-4.5. Justice Durham's opinion does not even attempt to read the statute on the basis of its plain language, but instead simply rewrites its provisions by attributing motives to the legislature. Although the requirement relating to conclusion, rather than commencement, of legal proceedings is unusual and could potentially raise constitutional concerns in certain hypothetical scenarios, this case is not one of them.

Gonzalez, 2000 UT 28 at ¶52 (Russon, J., dissenting).

petition for adjudication of marriage within one year after the termination of the relationship." Gonzalez, 2000 UT 28 at ¶30. Because Linda filed her action October 1, 1996, well within one year following the August 28, 1996 termination of the relationship,[2] under Gonzalez, it was timely and the trial court has jurisdiction to enter the Declaration of Marriage and Decree of Divorce (Declaration). Likewise, the trial court erred when it subsequently concluded that it was without jurisdiction to enter the order later than the one-year anniversary of the relationship's termination, and granted

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[2]The Court's finding that the relationship terminated on this date is supported by the facts that when the final separation occurred, Cecil changed the locks on the common residence, and Linda moved to a separate home. Consequently, Cecil has not shown this finding to be clearly erroneous.

Cecil's Rule 60(b)[3] motion and vacating the Declaration on that basis.[4] Accordingly, we reverse those orders.[5]

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[3]Although Cecil termed his motion as a motion as a motion to dismiss, "we look past a motion's label to its substance and treat it accordingly." Grossen v. DeWitt, 1999 UT App 167, ¶6, 982 P.2d 581; accord In re Adoption of Baby K., 967 P.2d 947, 948 n.1 (Utah Ct. App. 1998). Because the substance of Cecil's motion was for relief from a judgment that is void for lack of subject matter jurisdiction, it is properly considered as a motion under Rule 60(b)(4) and we treat it accordingly. See In re Baby Boy Doe, 894 P.2d 1285, 1288 (Utah Ct. App. 1995).

[4]Because we conclude that under Gonzalez the Declaration was properly entered and should not have been later set aside on Cecil's motion, we have no occasion to address Linda's alternate asserted grounds for reversal, including the constitutionality of Utah Code Ann. §30-1-4.5

Cecil further argues on appeal from the Declaration that the trial court erred in determining that the statutory requirements for a common law marriage, specifically Cecil's consent, had been fulfilled. Because this determination

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(1998).

[5]In dicta, the Gonzalez court purported not to overrule this court's decision in Bunch, instead distinguishing it because, unlike in the instant case and in Bunch, no divorce was sought in Gonzalez. See Gonzalez, 2000 UT 28 at ¶29n.7. However, we can find no support for the proposition that in enacting Utah Code Ann. §30-1-4.5, the Legislature intended to create different rules and results for cases in which an establishment and a divorce is sought, and cases in which an establishment alone is sought. Consequently, we conclude that Gonzalez overruled Bunch and applies here notwithstanding that Linda sought to establish the marriage and obtain a divorce.

required the court to apply the statutory requirements to the facts, it is a mixed question of law and fact. See Platts v. Parents Helping Parents, 947 P.2d 658, 661 (Utah 1997). This court will not reverse the trial court's factual finding unless they are clearly erroneous, or the court's application of the statute to those findings, absent an abuse of discretion. See Utah R. Civ. P. 52(1); Platts, 947 P.2d at 661.

Our supreme court has explained that "what must be shown by the party claiming the benefit of an unsolemnized marriage is that at some point mutual consent was given," Whyte v. Blair, 885 P.2d 791, 794 (Utah 1994), and consent can be established through acquiescence. See id. at 794 n.3. There was considerable evidence adduced at trial supporting the court's conclusion that Cecil consented to an unsolemnized marriage. For example, Cecil and Linda

cohabited since 1985,[6] established a joint credit and checking accounts, mutually contributed to household expenses, purchased a residence together, and filed joint tax returns. Further, Linda continued to use the common surname and Cecil designated Linda as the primary beneficiary on his life insurance policy. These facts support the determination that Linda and Cecil consented to enter into a common law marriage. See id. at 795. Consequently,

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[6]We reject Cecil's further argument that the court made no finding of cohabitation after the 1987 effective date of section 30-1-4.5 and therefore the Declaration is invalid. Although the court found that cohabitation commenced in 1985, the court also found that it continued until August 1996. Hence, the nine years of continued cohabitation after enactment of the statute is sufficient for recognition of the unsolemnized marriage under the statute.

we cannot say the trial court abused its discretion and we therefore affirm its determination.

In sum, regarding Cecil's appeal from the Declaration, because the time restriction of Utah Code Ann. §30-1-4.5 (1998) is not jurisdictional and the court did not abuse its discretion in applying that section to the facts here, we affirm. Further, regarding Linda's appeal, we conclude the court erred in granting Cecil's motion for relief from the judgment and vacating the Declaration of Marriage and Decree of Divorce. Accordingly, we reverse those orders, returning this case to its status before the court granted Cecil's motion, and remand so the trial court may complete the proceedings governing property distribution.[7]

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[7]Because Cecil did not prevail on Linda's appeal, we deny Cecil's request for costs under Rule 34, Utah Rules of Appellate Procedure.

Affirmed in part, reversed in part, and remanded.

"s_____
James Z. David, Judge

WE CONCUR:

"s_____
Russell W. Bench, Judge

"s_____
Gregory K. Orme, Judge

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of March, 2000, a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to:

MARY C. CORPORON
BRIAN J. GARDNER
CORPORON & WILLIAMS PC
808 E S TEMPLE
SALT LAKE CITY UT 84102-1305

SUZANNE MARELIUS
LITTLEFIELD & PETERSON
426 S 500 E
SALT LAKE CITY UT 84102

and a true and correct copy of the attached MEMORANDUM DECISION was deposited in the United States mail to the judge listed below:

HONORABLE J. DENNIS FREDERICK
THIRD DISTRICT, SALT LAKE
450 S STATE ST
PO BOX 1860
SALT LAKE CITY UT 84114-1860

"s_____
Judicial Secretary

TRIAL COURT: THIRD DISTRICT, SALT LAKE, 964904244
APPEALS CASE.: 971635-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

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Linda Kay Clark,
Plaintiff and Respondent,

v.

Cecil E. Clark,
Defendant and Petitioner,

REMITTITUR
No. 20000276-SC

Court of Appeals
No. 970635-CA

Third District Court
Salt Lake Department
No. 964904244

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This cause having been heretofore argued and submitted, the Court being sufficiently advised in the premises, and the OPINION having been issued, the matter is hereby remitted.

Opinion Issued: June 5, 2001

Remittitur Issued: July 31, 2001

Record: 3 Vols. Transcripts, 2 Vols. Pleadings, 2 Envs. Exhibits.

THIRD DISTRICT, SALT LAKE
964904244

"s_____
Pat H. Bartholomew
Clerk of Court

By(s")_____
Deputy Clerk

07-31-01
Date